

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

GREGORY FRANKLIN,

Plaintiff,

vs.

L.E. SCRIBNER, et al.,

Defendants.

CASE NO. 07cv438 BTM (LSP)

**ORDER:**

**(1) DENYING PLAINTIFF'S MOTION  
FOR EXTENSION OF TIME [Doc.  
#35];**

**and**

**(2) ADOPTING REPORT AND  
RECOMMENDATION AND  
DENYING PLAINTIFF'S MOTION  
FOR DEFAULT JUDGMENT [Doc.  
#13]**

In a Report and Recommendation filed on July 23, 2007, Magistrate Judge Papas recommended that the Court deny Plaintiff's motion for default judgment. Any objections to the Report and Recommendation were required to be filed on or before August 3, 2007. On August 6, 2007, the Clerk received a motion from Plaintiff for an extension of time to file his objection. Plaintiff states that he has recently been denied access to the prison law library and he argues that such access is needed in order to formulate a proper response to the Report and Recommendation.

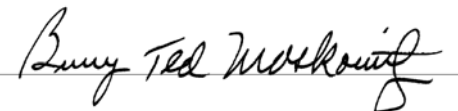
The Court finds that Plaintiff has not shown any need for law library access in formulating an objection to the Report and Recommendation. Magistrate Judge Papas recommended denying the motion for default judgment as premature because the answer

1 deadline for most Defendants had not passed. In addition, no proof of service had yet been  
2 filed for two Defendants, thereby precluding the grant of default judgment. An executed  
3 waiver of service has since been returned for Defendant Nelson [Doc. #31], and the  
4 summons for Defendant Zill was returned unexecuted the same day [Doc. #32].  
5 Nonetheless, the deadline for Defendant Nelson's answer has also not passed yet.  
6 Accordingly, the deficiencies in Plaintiff's motion for default judgment cannot be cured by any  
7 reference to legal materials. Rather, the motion must be denied at this time unless Plaintiff  
8 can show that the facts surrounding the service of Plaintiff's complaint are not accurately  
9 reflected in the Report and Recommendation. Therefore, the Court **DENIES** Plaintiff's  
10 motion for an extension of time to file an objection to the Report and Recommendation.

11 Furthermore, the Court finds the disposition of the Report and Recommendation  
12 suitable for determination without oral argument, in accordance with CivLR 7.1(d)(1), and  
13 hereby vacates the August 10, 2007 hearing set for this matter. The Court agrees with the  
14 Report and Recommendation and adopts it as the decision of the Court. Plaintiff's Motion  
15 for Default Judgment is therefore **DENIED**.

16  
17 **IT IS SO ORDERED.**

18 DATED: August 9, 2007

19   
20  
21 Honorable Barry Ted Moskowitz  
22 United States District Judge  
23  
24  
25  
26  
27  
28